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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) <div style="font-size: 1.2em; margin-left: 100px;">1934/13</div>	
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Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		First Named Inventor <div style="font-size: 1.2em; margin-left: 20px;">Elchanan Bruckheimer</div>	
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Art Unit <div style="font-size: 1.2em; margin-left: 20px;">3731</div></td> <td style="padding: 5px;">Examiner <div style="font-size: 1.2em; margin-left: 20px;">G.K. Dawson</div></td> </tr> </table>	
Art Unit <div style="font-size: 1.2em; margin-left: 20px;">3731</div>	Examiner <div style="font-size: 1.2em; margin-left: 20px;">G.K. Dawson</div>		

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☐ attorney or agent of record.
Registration number _____

☒ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 33,883

Signature

MARK H. FRIEDMAN

 Typed or printed name

301-9521011

 Telephone number

Nov. 8, 2007

 Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
	§	
Elchanan Bruckheimer	§	Confirmation No. 3477
	§	
Serial No.: 10/069,618	§	
	§	
Filed: June 3, 2002	§	Group Art Unit: 3731
	§	
For: Intravascular Device and Method	§	Attorney
Using It	§	Docket: 1934/13
	§	
Examiner: Glenn K. Dawson	§	

Commissioner for Patents
P.O. Box 1450, Alexandria
Virginia, 22313-1450

LETTER ACCOMPANYING PRE-APPEAL BRIEF
REQUEST FOR REVIEW

Sir:

Applicant requests review of the Final Office Action mailed August 9, 2007. This letter is filed concurrently with a Notice of Appeal and form SB33 requesting pre-appeal brief review. As explained in detail below, the Applicant respectfully submits that the Examiner has made errors of fact and law in applying the prior art to the pending claims, and has failed to find all elements of the independent claims anticipated by the prior art. Accordingly, the application is not in condition for appeal and Applicant should be spared the time and expense associated with the preparation and filing of an appeal brief. Applicant further requests that the pending claims be allowed, or alternatively, that prosecution be reopened and an appropriate Office communication issued in due course.

Claims 15-17 have been rejected under § 102(b) as anticipated by Lesh et al. (US 6152144). However, after careful review, the Applicant is unable to find any

basis in Lesh for the asserted anticipation with regard to a number of features explicitly recited in the claims. Examples of these features will now be illustrated.

Feature 1

Independent claim 15 recites that the closed loop of flexible material is *“deployed within said lumen in a first state in which said closed loop is folded on itself and substantially straightened so as to extend substantially parallel to said feed direction.”* The Applicant finds no indication in Lesh that any closed loop is straightened so as to extend parallel to the feed direction of the catheter. The Examiner has alluded to the text of Lesh (col. 8, lines 8-10) which states that the loop *“may have connections or joints spaced thereon to facilitate contracting or folding of the device for non-invasive delivery,”* but the Applicant finds no indication in the Lesh document that the “contracted” or “folded” state of the loop would be straightened so as to extend parallel to the feed direction of the catheter. To the contrary, the only figure illustrating deployment of the device within the delivery catheter is Figure 11 which shows “collapsed occluding member 101” appearing to be bunched-up on itself, and certainly not straightened parallel to the feed direction of the catheter. Furthermore, the radial spoke elements of “frame structure 14” would seem to preclude straightening of the loop along the feed direction.

Feature 2

Independent claim 15 recites that the closed loop of flexible material is *“configured so as to be elastically biased to a predefined curved form such that, when said closed loop is advanced beyond said delivery system, said biasing to a curved form results in deployment of said loop in a direction generally perpendicular to said feed direction.”* The Applicant finds no indication in Lesh that any biasing to a predefined form has a causal relation to the reorientation of the loop perpendicular to

the feed direction. To the contrary, it appears that the orientation of the loop is dictated by radial tethers of "frame structure 14" relative to "retention member 12" which is deployed ahead of the loop. This is explicitly stated in column 8, lines 64-67 which disclose that:

A retention member 38 maintains the position of an occluding member 41 in a substantially perpendicular orientation with respect to a longitudinal axis of the LAA 42.

thereby leaving no room for doubt that it is the retention member which dictates the orientation of the loop of the occluding device. In this respect, the Lesh reference is analogous to the Pavenik and Taheri references which were previously cited by the Examiner and which were overcome to the Examiner's satisfaction by arguments presented in the Applicant's response of June 28, 2007.

Feature 3

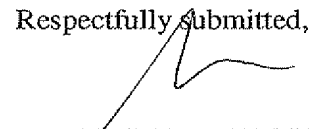
Independent claim 15 recites that the intravascular device is "*configured such that said intravascular device is retained in a given position within the vessel primarily by contact of said at least one loop against the inner wall of the vessel.*" The Applicant finds no indication in Lesh that the device is configured to be retained by the loop. To the contrary, Lesh clearly teaches configuration of the device to be retained primarily by "tissue penetrating shaft 25" and the associated anchoring configurations 26 or 29. This is explicitly stated, for example, in column 8, lines 62-64 which disclose that:

A helically shaped distal extremity 35 of a tissue penetrating shaft 36 has been screwed into the wall tissue of the LAA and is mechanically secured thereto.

thereby leaving no room for doubt that retention of the device is primarily by anchoring of helically shaped distal extremity 35, and not by the loop of the occluding device.

In view of the above observations, the Applicant respectfully submits that the Examiner has failed to show any teachings for multiple features explicitly recited in independent claim 15 of record, thereby rendering the rejection of this claim under § 102 clearly improper. For this reason, it is respectfully submitted that this case is not in condition for appeal. Allowance of the case, or reopening of prosecution is respectfully solicited.

Respectfully submitted,



Mark M. Friedman
Attorney for Applicant
Registration No. 33,883

Date: November 8, 2007